

In the Matter of )  
 )  
AT&T Corp. Petition Pursuant to )  
47 U.S.C. Section 160(c) of the ) WC Docket No. 03-256  
Communications Act for Forbearance from )  
Enforcement of Section 204(a)(3) of )  
the Communications Act, as Amended )

AT&T's Petition for Forbearance would stand the Telecommunications Act of 1996 (1996 Act) on its head, and increase the regulation of local exchange carriers (LECs). The Commission's forbearance authority under Section 10 of the Communications Act of 1934, as amended (the Act),<sup>1</sup> cannot, and should not, be used to these ends. In addition, AT&T does not have standing under Section 10(c) of the Act to request forbearance of Section 204(a)(3) of the Act<sup>2</sup> - a provision which applies to LECs, not interexchange carriers (IXCs) such as AT&T. Notwithstanding these flaws in AT&T's Petition, AT&T's concerns about Section 204(a)(3) consist of disingenuous complaints and rehashed arguments that were previously rejected by the Commission.

<sup>1</sup> 47 U.S.C. § 160.

<sup>2</sup> 47 U.S.C. § 204(a)(3).

The rural incumbent LECs listed in Attachment A (collectively, the Rural ILECs), by their attorney, submit these comments to oppose AT&T's request to undo the deregulatory achievements of the 1996 Act.

**I. THE GOAL OF THE 1996 ACT IS TO DEREGULATE CARRIERS - NOT TO INCREASE THEIR REGULATORY BURDENS**

The goal of the 1996 Act is deregulation.<sup>3</sup> AT&T's Petition asks the Commission to forbear from enforcing Section 204(a)(3) of the Act.<sup>4</sup> By asking for forbearance, AT&T's Petition proposes to increase the regulatory burdens on LECs - burdens which were relaxed via Section 204(a)(3). This is not the first time that AT&T has asked the Commission to retreat from its deregulatory goals.<sup>5</sup> The Commission has soundly rejected AT&T's previous

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<sup>3</sup> H.R. Conf. Rep. No. 458, 104th Cong. 2d Sess. 1 (1996).

<sup>4</sup> Section 204(a)(3) states: "A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under [Section 204(a)(1)] before the end of that 7-day or 15-day period, as is appropriate." 47 U.S.C. § 204(a)(3).

<sup>5</sup> E.g., 1998 Biennial Regulatory Review - Part 61 of the Commission's Rules and Related Tariffing Requirements, Report and Order and First Order on Reconsideration, 14 FCC Rcd. 12,293, 12,307 (1999) (stating that "AT&T does not provide a sufficient reason to retreat from our deregulatory goal"); ALLTEL Corp., Petition for Waiver of Section 61.41 of the Commission's Rules and Applications for Transfer of Control, Memorandum Opinion and Order, 14 FCC Rcd. 14,191, 14,205 (1999) (stating that AT&T's

requests. The Commission should similarly reject AT&T's request to retreat from the Commission's deregulatory goals here.

## **II. AT&T MISUSES SECTION 10 OF THE ACT**

AT&T makes four key errors in its use of the forbearance provisions of Section 10 of the Act.

First, as noted above, AT&T requests the Commission to increase regulations applicable to LECs. However, the purpose of Section 10 of the Act is to allow the Commission to eliminate regulations.<sup>6</sup> Using forbearance to increase regulations is like trying to use the Atkins diet to gain weight. Both strategies mismatch means with ends.

Second, AT&T is missing a key prerequisite to the use of forbearance: changed circumstances. The Commission acknowledged this prerequisite in a previous forbearance proceeding involving Ameritech. There, the Commission denied Ameritech's petition for forbearance because Ameritech failed "to present any new or unanticipated circumstances that might have persuaded Congress to adopt" a different statutory provision.<sup>7</sup> The Commission stated

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request would create an "additional layer of regulation").

<sup>6</sup> See 104 Cong. Rec. S7881, S7898 (daily ed. June 5, 1995) (statement of Sen. Dole).

<sup>7</sup> Petition of Ameritech Corporation for Forbearance from Enforcement of Section 275(a) of the Communications Act of 1934, as Amended, Memorandum Opinion and Order, 15 FCC Rcd. 7066, 7070 para. 9 (1999) [hereinafter Ameritech Forbearance Order]; see also 104 Cong. Rec. at S7887 (statement of Sen. Pressler)

that it "would be inconsistent with the public interest" to "upset Congress' judgment."<sup>8</sup> The same is true here. AT&T has not shown, and could not show, that there have been any changes in the industry that would have persuaded Congress to adopt a different version of Section 204(a)(3). Thus, even if forbearance could be used to increase the regulatory burdens on LECs, it would not be in the public interest to do so, just as forbearance was not in the public interest in the Ameritech case.

Third, AT&T, as an IXC, improperly uses Section 10(c) of the Act to request forbearance of regulations applicable to LECs.<sup>9</sup> Section 10(c) states:

Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers.

AT&T can ask for forbearance for itself. It cannot ask for forbearance for some other group of carriers, such as the LECs here. In other words, AT&T has no standing to request forbearance pursuant to Section 10(c) of the Act.

Finally, AT&T does not correctly define the "competitive market" - let alone analyze the effect of forbearance on that

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(forbearance may be used as the industry changes).

<sup>8</sup> Ameritech Forbearance Order, 15 FCC Rcd. at 7070 para. 9.

<sup>9</sup> AT&T Petition for Forbearance at 1 (dated Dec. 3, 2003) [hereinafter AT&T Petition].

market - as required by Section 10(b) of the Act.<sup>10</sup> The market at issue in Section 10(b) consists of the carriers that would be the objects of the forbearance regulation. For example, when considering a petition for forbearance of the unbundling obligations applicable to some LECs, the Commission considered the effect of forbearance on competition among LECs.<sup>11</sup> In the case at hand, because Section 204(a)(3) applies to LECs, the Commission must consider the effect on competition among LECs.

But AT&T focuses on competition among IXCs, not LECs. For example, AT&T uses the word "competitors" to mean IXCs that are access customers.<sup>12</sup> Elsewhere, AT&T asserts that some access customers "compete with LECs in the interexchange market."<sup>13</sup> But competition in the interexchange marketplace is irrelevant to the Section 10(b) analysis.

In sum, AT&T misapplies Section 10 to request the increased regulation of LECs, fails to show the changed circumstances that are prerequisites to forbearance, does not provide the

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<sup>10</sup> Section 10(b) states that in granting forbearance, the Commission "shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions." 47 U.S.C. § 160(b).

<sup>11</sup> 1998 Biennial Regulatory Review - Review of Depreciation Requirements for Incumbent Local Exchange Carriers, Report and Order in CC Docket No. 98-137, Memorandum Opinion and Order in ASD 98-91, 15 FCC Rcd. 242 para. 68 (1999).

<sup>12</sup> AT&T Petition at 16 (referring to "IXC access customers").

<sup>13</sup> Id. at 14.

appropriate competition analysis required in Section 10(b), and in any event, has no standing under Section 10(c) to request forbearance.

### **III. AT&T'S CONCERNS ABOUT SECTION 204(a)(3) OF THE ACT ARE UNCONVINCING**

Notwithstanding AT&T's misuse of Section 10 of the Act, AT&T's complaints about Section 204(a)(3) of the Act are unconvincing, as discussed below.

#### **A. Liability Limitations**

AT&T complains that the "deemed lawful" provision insulates LECs from damages.<sup>14</sup> But for many years, AT&T has insulated itself from damages claims by raising many defenses such as: (a) the filed rate doctrine;<sup>15</sup> (b) tariffed liability limitations;<sup>16</sup> and (c) the statute of limitations.<sup>17</sup> Each of these defenses can limit the award of damages to customers after tariffs go into

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<sup>14</sup> E.g., id. at 17.

Taconic Telephone Corp., one of the Rural ILECs, is one of the LECs listed in Exhibit 1 to AT&T's Petition. Taconic does not agree with the data provided by AT&T to calculate the alleged overearnings.

<sup>15</sup> E.g., Central Office Telephone v. AT&T, 108 F.3d 981 (9th Cir. 1997), rev'd, 524 U.S. 214 (1998).

<sup>16</sup> E.g., Fax Telecommunications v. AT&T, 952 F. Supp. 946, 955 (E.D.N.Y. 1996), aff'd, 138 F.3d 479 (2d Cir. 1998).

<sup>17</sup> E.g., Ryder Communications, Inc. v. AT&T Corp., Memorandum Opinion and Order, 18 FCC Rcd. 13,603 para. 20 n.68 (2003) (noting that AT&T raised the affirmative defense of the statute of limitations).

effect, just as the "deemed lawful" provision can limit damages. AT&T's opposition to the "deemed lawful" provision is a thinly veiled complaint that Section 204(a)(3) applies only to LECs, and not to IXC's such as AT&T.<sup>18</sup>

#### **B. 7-Day and 15-Day Notice Periods**

AT&T also asserts that it is not asking for forbearance from the notice periods for tariff filing.<sup>19</sup> But then AT&T complains that the 7-day notice period for rate decreases and the 15-day notice period for rate increases are too short.<sup>20</sup>

AT&T's assertions about the time available to file a petition against a tariff that is subject to a 7-day notice period are not new. AT&T raised similar arguments in its petition for reconsideration concerning the implementation of Section 204(a)(3).<sup>21</sup> And those arguments were rejected twice by the Commission.<sup>22</sup> In particular, the Commission noted that the electronic tariff filing system (ETFS) has facilitated tariff review, and that in any event, rate decreases should be effective

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<sup>18</sup> See AT&T Petition at 3.

<sup>19</sup> Id. at 4.

<sup>20</sup> Id. at 9.

<sup>21</sup> Id. at 9 n.13.

<sup>22</sup> Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, Order on Reconsideration, 17 FCC Rcd. 17,040 para. 8 & n.25 (2002).

quickly in order to "confer immediate benefits on customers."<sup>23</sup>

AT&T presents no new arguments on this issue. Moreover, any concerns that AT&T has about deadlines for filing petitions apply to more than just the tariff filings at issue here, and should be raised in the context of the rulemaking proceedings that created the tariff filing rules. Just as the Commission rejected AT&T's arguments about the 7-day notice period previously, the Commission should reject AT&T's arguments here.

AT&T's assertions about the notice periods are especially paradoxical when they are considered in light of the Commission's decisions concerning the notice periods applicable to international services. In that context, AT&T, as a dominant carrier, previously argued for a one-day notice period for tariff filing. The Commission rejected AT&T's request, saying that it would unduly limit the Commission's ability to review AT&T's tariffs.<sup>24</sup> In other words, AT&T wanted a shortened notice period for itself as a dominant international carrier, but AT&T objects to the longer notice periods for LECs in the case at hand. AT&T cannot have it both ways.

In addition, when the Commission adopted a 14-day notice period for dominant international carriers, the Commission stated

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<sup>23</sup> Id. para. 8.

<sup>24</sup> Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report and Order, 11 FCC Rcd. 12,884 paras. 79-83 (1996).



that "a 14-day notice period . . . is sufficient to permit interested parties and the Commission to assess the lawfulness of any filed tariffs."<sup>25</sup> AT&T has not explained why a 14-day notice period is adequate for tariff filings made by international carriers while a 15-day notice period would not be adequate for tariff filings made by domestic LECs.

Finally, Congress adopted the 7-day and 15-day notice periods specifically to "[s]peed up FCC action for phone companies."<sup>26</sup> AT&T has shown no reason why the Commission should thwart this goal by granting forbearance here.

### **C. Section 208 Complaint Process**

AT&T's dislike of Section 204(a)(3) appears to be rooted in AT&T's unhappiness with the formal complaint process. AT&T bemoans that the litigants need to provide "detailed supporting information and extensive documentation."<sup>27</sup> But that concern applies to more situations than just streamlined tariff filings. If AT&T truly objects to the complaint rules, AT&T should raise

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<sup>25</sup> Telefonica Larga Distancia de Puerto Rico, Memorandum Opinion and Order, 12 FCC Rcd. 5173, 5180 (1997).

<sup>26</sup> 141 Cong. Rec. at S7898 (statement of Sen. Dole). AT&T therefore is wrong when it asserts that there is no legislative history concerning Section 204(a)(3) of the Act. AT&T Petition at 5-6 n.5.

<sup>27</sup> Id. at 16 n.27.

its concerns in the context of the Commission's rulemaking proceedings to implement Section 208 of the Act - not here.

**CONCLUSION**

As demonstrated above, AT&T's Petition for Forbearance improperly invokes Section 10(c) of the Act to ask the Commission to misuse its forbearance authority to address AT&T's implausible concerns about Section 204(a)(3), and thereby to increase the regulatory burdens on LECs. AT&T's Petition for Forbearance should be denied.

Respectfully submitted,

**RURAL INCUMBENT LOCAL EXCHANGE CARRIERS  
LISTED IN ATTACHMENT A**

By



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## ATTACHMENT A

### RURAL ILECs

Big Sandy Telecom, Inc.  
Bluestem Telephone Company  
C-R Telephone Company  
Chautauqua and Erie Telephone Corporation  
China Telephone Company  
Chouteau Telephone Company  
Clarks Telecommunications Co.  
Columbine Telecom Company  
Community Service Telephone Company  
Ellensburg Telephone Company, Inc.  
Fremont TelCom  
Great Plains Communications, Inc.  
GTC, Inc.  
Maine Telephone Company  
Marianna and Scenery Hill Telephone Company  
Northland Telephone Company of Maine, Inc.  
Odin Telephone Exchange, Inc.  
Peoples Mutual Telephone Company  
Sidney Telephone Company  
Standish Telephone Company, Inc.  
STE/NE Acquisition Corp. d/b/a Northland Telephone  
Company of Vermont  
Sunflower Telephone Co., Inc.  
Taconic Telephone Corp.  
The El Paso Telephone Company  
The Columbus Grove Telephone Company  
The Orwell Telephone Company  
Waitsfield-Fayston Telephone Company  
Western Iowa Telephone Association  
Yates City Telephone Company  
YCOM Networks, Inc.

**CERTIFICATE OF SERVICE**

I, Susan Bahr, Law Offices of Susan Bahr, PC, hereby certify that on this 30th day of January 2004, I caused to be sent by first class U.S. Mail a copy of the foregoing to:

Leonard J. Cali  
AT&T  
Room 3A251  
One AT&T Way  
Bedminster, NJ 07921

A handwritten signature in cursive script, reading "Susan J. Bahr", is positioned above a horizontal line.

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Susan J. Bahr